

SERVED: June 24, 1997

NTSB Order No. EA-4557

UNITED STATES OF AMERICA
NATIONAL TRANSPORTATION SAFETY BOARD
WASHINGTON, D.C.

Adopted by the NATIONAL TRANSPORTATION SAFETY BOARD
at its office in Washington, D.C.
on the 4th day of June, 1997

_____)	
In the matter of)	
)	
MICHELLE PANABECKER NEFF,)	Docket NA-19
)	
Petitioner.)	
)	
_____)	

OPINION AND ORDER

On March 20, 1997, Administrative Law Judge William E. Fowler, Jr., served an order rejecting, for lack of jurisdiction, the petitioner's effort to obtain Board review of a November 25, 1996 letter from an FAA Regional Flight Surgeon which advised that a determination had been made that she was not qualified to exercise the privileges of her medical certificate and that doing so would constitute a violation of section 61.53 of the Federal Aviation Regulations.¹ Furthermore, the letter, disclaiming that it constituted or should be construed as "an order or demand for the return" of petitioner's medical certificate, suggested that

¹A copy of the law judge's "Order Dismissing Petition and Terminating Proceeding for Lack of Jurisdiction" is attached.

she consider voluntarily surrendering it.² Petitioner asks us, in effect, to overturn the law judge's decision and grant her other relief, including monetary damages against the Administrator. Because we agree with the law judge that we are not authorized to review the Flight Surgeon's letter, petitioner's appeal must be denied.

The petitioner maintains that the law judge's order should be reversed because the Flight Surgeon's letter, even if it did not directly order her to surrender her certificate, has produced a variety of adverse consequences, including a negative impact on her employment and on her employability. While we have no reason to question petitioner's account of the emotional and economic costs associated with the Flight Surgeon's opinion as to her entitlement to medical certification, the existence of such collateral effects does not create jurisdiction in the Board to review *his* judgments about a pilot's medical condition. Rather, as our cases involving flight surgeon letters with essentially identical language demonstrate,³ we are only empowered to examine the validity of the agency's medical determinations when they are

²The letter does not explain the basis for its assertion that petitioner does not meet the medical standards in FAR Part 67, but indicates that the basis for the disqualification conclusion is the petitioner's "failure to provide a comprehensive psychiatric evaluation." In this connection we note that attached to petitioner's appeal brief is a copy of a comprehensive psychiatric report that was forwarded by her doctor to the Flight Surgeon on January 31, 1997.

³See Petition of Doe, 1 NTSB 1793 (1972), and Administrator v. Schart, NTSB Order No. EA-3718 (1992).

coupled with an actual refusal to issue or a decision to take away a medical certificate. The risk that a medical certificate will be taken away if the Flight Surgeon's opinion or advice is ignored is not enough to support Board review.⁴

ACCORDINGLY, IT IS ORDERED THAT:

The appeal from the initial decision is denied.

HALL, Chairman, FRANCIS, Vice Chairman, HAMMERSCHMIDT, GOGLIA, and BLACK, Members of the Board, concurred in the above opinion and order. FRANCIS, Vice Chairman, submitted the following statement:

I concur in the opinion and order because it seems that precedent demands it and I believe that precedent ultimately is correct. The petitioner, however, presents some compelling arguments that the regional flight surgeon's letter is intimidating and confusing. While I support and understand the need for strong enforcement to ensure regulatory compliance, I am troubled by the implications of the practice embodied in this letter. I urge the FAA to review the language in this letter and this approach in light of the agency's considerable authority and power to take action affecting pilot operating and medical certificates.

⁴As the law judge's decision acknowledges, the petitioner will have ample opportunity to contest before the Board any decision by the Administrator either to revoke petitioner's current medical certificate or to not issue her a certificate when her current one expires.